Supreme Court, U.S.
FILED
MAR 17 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1455

ALEXANDER KULIK,

PETITIONER,

-vs-

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PHILIP A. DeMASSA
Attorney at Law
2150 First Avenue
San Diego, California 92101
Telephone: (714) 236-0897

Attorney for Petitioner
ALEXANDER KULIK

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_____

_____

Petitioner, Alexander Kulik, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered February 14, 1980.

OPINION BELOW

The Ninth Circuit Court of Appeals entered its decision, No. 78-3053, on February 14, 1980, denying petitioner's timely Petition for Rehearing and Request for Rehearing En Banc. A copy of the Order is attached as Appendix "A". An Order denying petitioner's appeal was originally entered on May 24, 1979. A copy of the original order is attached as Appendix "B".

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTION PRESENTED FOR REVIEW

1) Whether there was probable cause under the Fourth Amendment to issue a search warrant for a GMC pickup where the only fact presented to the magistrate linking the pickup to unawful activity was the affiant's belief?

2) Whether a warrant was needed to enter the residence to arrest a fugitive when the officers knew such person was there continuously for two days prior to their entry?

IMPORTANCE OF THE QUESTION PRESENTED

The Fourth Amendment provides that search warrants shall not issue but upon "probable cause". This Court has consistently held that the term "probable cause" means more than the good faith hunch or suspicion of a law enforcement officer seeking to invade the privacy of a citizen's effects to search. Hence, this Court has consistently required that facts, as opposed to the officer's belief, are the touchstone of probable cause.

Petitioner seeks review so that the issue of the quantum of facts and evidence necessary under the circumstances of this case as it relates to automobiles can be decided. An automobile, at times, carries with it the same sanctity of privacy as one's dwelling or suitcase when it is used as a repository of personal items and it is no longer mobile.

The Fourth Amendment's requirement that a search warrant not issue but upon probable cause would be eviscerated if an officer's belief is substituted for facts establishing unlawful activity. An averment that one who was once arrested for possession of narcotics or is suspected of a homicide would, coupled with the officer's belief, subject all his property to an open season by officers who desired to continue searching for evidence.

Further, petitioner has raised the issue of whether a warrant is necessary to apprehend a fugitive in a house when officers have probable cause to believe she is in the dwelling. This issue is currently before the Court.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

STATEMENT OF THE CASE

On December 14, 1977, Newport Beach Officer Lee Roberts swore out an affidavit for search warrants to search a condominium and two vehicles (a GMC pickup and a Cadillac Deville) in Carlsbad, California. The affidavit indicated that the officers were in Carlsbad on December 13, 1977, at the condominium at 2412 Altisma Way, Apartment "F" for the purpose of locating fugitive Elsie Kulik on a

$500,000.00 bench warrant issued November 17, 1978, by the Orange County Superior Court on a conspiracy to commit murder offense. The affiant, Newport Beach Police Officer Lee Roberts, stated he observed Elsie Kulik on December 13 and she did not leave the residence at any time. Roberts caused to have the condominium placed under constant surveillance. Elsie Kulik was not observed to leave the condominium. On December 14, the affiant and five other police officers knocked on the door and demanded to arrest Elsie Kulik on the Orange County arrest warrant. Her husband, Alexander Kulik, stated she was not there; he was arrested for harboring a fugitive.

The affidavit indicated the officers commenced a floor to floor search of the 3 floor condominium. While searching the second floor level for Mrs. Kulik, a small amount of loose marijuana was observed on a coffee table. The affiant opined it was his "experience that persons who use marijuana keep an additional supply hidden for personal use and for sale in their homes and in their vehicles." The affiant requested to search for items that were used in the packaging of marijuana, "such as baggies and it has been your affiant's experience that persons who use and sell marijuana will keep scales to weigh substances which are sold or purchased."

The affiant stated that he had received information from another Newport Beach officer that Alexander Kulik had been arrested on October 22, 1977, in Orange County with a pound of heroin and was charged with possession for sale.

A further search of the condominium, indicated a .22 caliber rifle underneath the bed on the third level and a cylinder portion of a hypodermic syringe, without the plunger or needle. Elsie Kulik was arrested hiding in a crawl hole in the bedroom area dressed in a nightgown.

A further search of the apartment revealed two file boxes labeled "PDI" which stood for Prasadam Distributing Incorporated, a business involved in the homicide investigation. The affiant was aware that an investigation was being conducted by another Newport Beach officer involving the death of Steven Bovan who was shot numerous times with a .9 mm weapon. Bovan subsequently died.

The affiant related that he had been told that Alexander Kulik was kidnapped by Bovan and others and subsequently ransomed for $100,000.00. After Alexander Kulik's release, various persons met at PDI and $25,000.00 was offered to Anthony Marone, Jr., Anthony Marone, Sr.,

Frank Rossi, Jerry Fiori and Ray Resco for the kidnap and murder of Bovan and two others. Alexander Kulik made this offer and Elsie Kulik and others joined in it in order to get revenge for Alexander Kulik's kidnapping.

The affiant indicated that there were tape recording devices in each room of PDI and there were recordings made of conversations. An earlier search warrant to search the offices of PDI was unsuccessful because it was determined that the tapes were moved to other offices.

Further efforts were made to locate the kidnappers including traveling to San Diego with expense money being paid to Marone, Jr., Rossi, Fiori and Resco.

It was the affiant's opinion that the documents and tape recordings corroborating the homicide investigation were presently located in the file boxes which were located in the Altisma condominium.

The affiant found fictitious identification in the name of Albert Helms on Alexander Kulik when he was arrested. Roberts related that he "received information from official law enforcement sources" that the GMC pickup has been driven by Alexander Kulik "in the recent past". The affiant observed this vehicle parked in

the garage of the premises. Roberts also observed Alexander Kulik driving the Cadillac Deville during the time he had the residence under surveillance. (December 13 and 14, 1977).

This pickup was registered to Albert Helms according to California Motor Vehicle records.

The affiant concluded that based upon his "training and experience" , he knew that "persons who possess marijuana, false identification, and other evidence of crimes often carry and store these items in their homes as well as their vehicle" (sic).

The affidavit concluded by seeking a search warrant for seizure of "said property, or any part thereof, from the above-described premises."

A San Diego municipal court judge issued the search warrant authorizing the search to include all rooms, storage areas and out buildings of the Altisma address, along with the Cadillac Deville and the 1977 GMC pickup for the following personal property: "narcotics, including but not limited to marijuana, paraphernalia for the sale, use and transfer of marijuana, including but not limited to baggies, sales records, wrapping paper, tape, papers, documents and effects which show possession, dominion and control

of said premises, including but not limited to keys, rental receipts, mail envelopes and monogrammed clothing, and tape recordings, receipts, phone messages, cancelled check stubs that would indicate that Alexander Kulik and Elsie Kulik hired other persons to kill Steven Bovan, and records from Prasadam Distributing Incorporated."

Numerous items were seized from the Altisma residence. Seized from the air cleaner of the GMC pickup was 13 ounces of heroin which formed the basis of the conviction for which petitioner stands convicted and seeks a petition for writ of certiorari to this Court.

On December 16, 1977, petitioner and his wife were indicted on two counts in United States District Court for the Southern District of California with conspiracy to possess with intent to distribute and possession of 13 ounces of heroin with intent to distribute.

On February 24, 1978, a motion to suppress evidence was filed by petitioner in the district court. It was denied on February 27, 1978. Petitioner was convicted on July 31, 1978, on count two pursuant to a written stipulation. On September 5, 1978, petitioner was sentenced to four year's imprisonment and a ten year special parole term. The government

dismissed count one as to petitioner and both counts as to Elsie Kulik.

Notice of appeal was filed September 6, 1978. Petitioner is currently incarcertated, having voluntarily moved to have his previously set appeal bond exonerated.

During the pendency of the appeal, petitioner filed a Motion to File A Supplemental Brief and a Supplemental Brief Based on State Court Judgment. 1/

At oral argument, petitioner raised the propriety of the entry into the condominium to arrest Elsie Kulik without a warrant, citing United States v. Prescott, 581 F.2d 1343

1/ The supplemental brief alleged that a California superior court had ruled on the same affidavit involved herein at petitioner's motion to suppress evidence in state court. The state court ruled that the warrant was unlawful both under the Fourth Amendment and the California Constitution. Petitioner's arguments that the state court judgment should be given deference and full faith and credit was not reached by the Circuit Court of Appeals and consequently will not be raised herein.

(9th Cir. 1978).

On May 24, 1979, the circuit court affirmed petitioner's conviction. The circuit voted two to one for conviction, Judge Ely dissented, holding that the affidavit was insufficient to authorize searching of the GMC pickup. (Appendix "B").

A timely filed petition for rehearing and rehearing en banc was denied February 14, 1980. (Appendix "A").

ARGUMENT

I

THE SEARCH WARRANT WAS NOT SUPPORTED BY PROBABLE CAUSE TO BELIEVE THE GMC TRUCK CONTAINED EVIDENCE.

A. The Affidavit Set Forth Solely The Officer Affiant's Belief Evidence Would Be Found In The Pickup; Mere Belief Is Insufficient For Probable Cause.

Because the officer affiant observed a small quantity of marijuana in the condominium, he stated it was his "experience that persons who use marijuana keep an additional supply hidden for personal use and for sale in their homes and vehicles".

The affiant observed a GMC pickup parked in the garage that had been driven by petitioner in "the recent past," along with a more recently driven Cadillac. The affiant concluded based upon his training and experience that he knew that "persons who possess marijuana, false identification, and other evidence of crime often carry and store these items in their home as well as their vehicle" (sic).

No facts were alleged to indicate how either vehicle related to unlawful

activity, or how the affiant knew a causal relationship between the objects to be searched and the objects sought existed.

Probable cause for a search warrant requires the same degree of certitude as probable cause to arrest. Zurcher v. Stanford Daily, 436 U.S. 547, 556-57, n. 6 (1978); Spinelli v. United States, 393 U.S. 410, 417-18, n. 5 (1969); Aguilar v. United States, 378 U.S. 108, 112, n. 3 (1964); Giordenello v. United States, 357 U.S. 480, 485-86 (1958); Ex Parte Burford, 7 U.S. (3 Cranch) 451-52 (1806). Both arrest and search warrants must set forth facts and not just the officer's belief that probable cause to arrest or search exists. A simple assertion of police suspicion is not itself a sufficient basis for a magistrate's finding of probable cause. Spinelli v. United States, supra, at 418.

Here, the affiant officer set forth no facts or circumstances to show that petitioner's vehicle was involved in unlawful activity. This Court on several occasions has held mere affirmance of belief or suspicion is insufficient to support probable cause to issue a search warrant. Facts must be presented. Nathanson v. United States, 290 U.S. 41, 47 (1933); Franks v. Delaware, 438 U.S. 154, 165 (1978).

> "If an officer simply avers, without more, that there is [illegal evidence], the warrant should not issue, even though the belief is an honest one, as evidenced by his oath, and even though the magistrate knows him to be an experienced, intelligent officer who has been reliable in the past." Spinelli, supra, at 423 (White, J., concurring); see also, Grau v. United States, 287 U.S. 124, 127 (1932); Byars v. United States, 273 U.S. 28, 29 (1927).

An automobile is entitled to the same Fourth Amendment safeguards and privacy considerations as an individual's home or suitcase, when the automobile is considered by the police as a repository for personal effects. This Court has normally considered a search of an automobile for less intrusive on the privacy rights protected by the Fourth Amendment than the search of one's person or home. Cardwell v. Lewis, 417 U.S. 583, 590 (1974). The Court reasoned that one has a "lesser expectation of privacy in a motor vehicle because its

function is transportation and it seldom serves as one's residence or as the repository of personal effects". Id. 2/

Contrary to the reasoning in Cardwell, supra, the affiant officer felt that vehicles were, in his experience, used to keep marijuana and other evidence of crime. Since the search sought to be authorized here was of the entire vehicle and its contents, the Fourth Amendment's requirement of probable cause must be the same quantum as to any other area where one has a reasonable expectation of privacy in his personal effects. Coolidge v. New Hampshire, 403 U.S. 443, 461-62 (1971); Carroll v. United States, 267 U.S. 132, 155-56, 158-59 (1925). Since the intrusion sought the search of every nook and cranny of the

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2/ Automobiles have traditionally been accorded lesser Fourth Amendment privacy protection because of their mobility and regulation and use. Arkansas v. Sanders, ____ U.S. ____, 99 S.Ct. 2586, 2591 (1979); United States v. Chadwick, 433 U.S. 1, 12-13 (1977). However, in petitioner's case, both petitioner and his wife were under arrest and the vehicle was in the garage. The affidavit contained nothing to show any personal material was observed in plain sight in the GMC or Cadillac.

automobile was no severe, the right to privacy is correspondingly greater. Cardwell v. Lewis, 417 U.S. at 573, n. 9.

Without more, a search warrant cannot be constitutionally supported when the facts used to support it are the officer's beliefs which show no unlawful activity involving petitioner with the automobile or the automobile itself.

B. The Affidavit Failed To Provide Any Nexus To The GMC Vehicle As To Provide Probable Cause To Believe It Contained Evidence.

The affidavit set forth that a small amount of marijuana, a plunger, some records relating to a murder investigation, a .22 rifle, and false identification were found in the residence. The GMC and Cadillac were related to the residence solely by petitioner's ownership under different names - a circumstance which is not unlawful. The affiant had observed petitioner drive the Cadillac the day before the search. Law enforcement sources told the affiant petitioner had driven the GMC truck "in the recent past". This innocent activity is insufficient to allow a search warrant's issuance.

Petitioner is aware of no case where this Court has authorized a search warrant under such meager facts and circumstances, where the affidavit sets fourth no activity related to the automobile except that it was driven in the recent past.

There must be a nexus between the item to be seized and criminal behavior. Warden v. Hayden, 387 U.S. 294, 307 (1967). The only nexus alleged by the affiant here was his own experience. As stated previously, ante "A", the officer's belief is insufficient.

The criminal behavior of possession of a small quantity of marijuana does not lead a California police officer to logically conclude other amounts are concealed in an automobile. This conclusion has been rejected by the California legislature which recently amended California Health and Safety Code Section 11357(b) to provide that possession of a ounce of marijuana is punishable as an infraction with a maximum $100.00 fine. 3/ Further, the California legislature, by enacting Penal Code Section 1000, et seq,

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3/ One state has held that possession of small amounts of marijuana within the home is constitutionally protected by the right to privacy. Ravin v. State (Alaska 1975), 537 P.2d 494.

commonly known as the "diversion" statute, has provided that possessors of small amounts of marijuana are considered fit candidates for rehabilitation whose cases would ultimately be dismissed. Calif. Pen, C. §100.5. The fact that a marijuana plant is growing does not justify the conclusion that one who cultivates marijuana possesses it in his residence, garages or outbuildings. People v. Pellegrin, 78 Cal.App.3d 913, 916-17, 144 Cal.Rptr. 421, 424 (1977). 4/

The other facts related in the affidavit provide no further support for any nexus: false identification, a syringe plunger, and a rifle add nothing. Since there was no allegation set forth in the affidavit of any connection between the item to be seized and criminal behavior, the evidence seized pursuant to search of the pickup must be suppressed under the Fourth Amendment.

4/ See also, People v. Scott, 259 Cal. App.2d 268, 277, 66 Cal.Rptr. 257 (1968).

II

THE OFFICERS NEEDED A WARRANT TO ENTER THE CONDOMINIUM TO ARREST ELSIE KULIK WHEN THEY WERE AWARE OF HER PRESENCE FOR TWO DAYS PRIOR TO ENTRY.

Newport Beach officers while executing an Orange County arrest warrant, were present in Carlsbad in San Diego County for two days before attempting to arrest petitioner's wife. Without attempting to secure a warrant from the local San Diego magistrate, the officers entered the condominium, arrested petitioner and commenced a thorough floor by floor search to determine if Mrs. Kulik was present.

The issue of whether a warrant is required to arrest a person in a home, where there already exists probable cause to arrest, is currently before this Court. Riddick v. New York, No. 78-5421; Payton v. New York, No. 78-5420; see also United States v. Prescott, 581 F.2d 1343, 1348-49 (9th Cir. 1978); 5/ United States v.

5/ Petitioner cited Prescott at oral argument and the circuit court considered it. (Appendix "B").

Reed, 572 F.2d 412, 417-22 (2 Cir.) cert. denied, sub-nom Goldsmith v. United States, 439 U.S. 913 (1978); People v. Ramey, 16 Cal.3d 263, 275, 127 Cal.Rptr. 629, 636, 545 P.2d 1333, 1340, cert. denied 429 U.S. 929 (1978).

Since this issue has been recently fully briefed and argued before this Court, it would serve no purpose to restate those arguments. Petitioner relies onthe briefs, arguments and cases cited above as there is no dispute on the facts.

CONCLUSION

The petition for writ of certiorari should be granted.

DATED: MARCH 14, 1980

PHILIP A. DeMASSA,
Attorney for Petitioner
Alexander Kulik

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, -vs- ALEXANDER KULIK, Defendant-Appellant.	)	No. 78-3053 O R D E R

Before: ELY, WALLACE and PREGERSON, Circuit Judges

The majority of the panel as constituted above has voted to deny the petition for rehearing; Judge Ely has voted to grant panel rehearing. Judges Wallace and Pregerson have voted to reject the suggestion for rehearing en banc, and Judge Ely has recommended rejection of the same.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

FILED
FEB 1 - 19..
RICHARD H. DEMME
CLERK, US COURT OF APPEALS

APPENDIX "A"

FILED

MAY 24 1979

EMIL E. MELFI, JR. CLERK
U. S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, -vs- ALEXANDER KULIK, Defendant-Appellant.	)	No. 78-3053
	)	ORDER

Appeal from the United States District Court
for the Southern District of California

Before: ELY and WALLACE, Circuit Judges,
and PREGERSON,* District Judge

After considering the sufficiency of the affidavit and search warrant and the Prescott issues, we conclude that the trial court correctly ruled on Kulik's motion to suppress. The conviction is affirmed. Judge Ely believes that the affidavit was insufficient to authorize the search of the pickup and therefore dissents.

*Honorable Harry Pregerson, United States District Judge, Central District of California, sitting by designation.

APPENDIX "B"

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO) ss.

GRACE M. FOLKS, after first being duly sworn, deposes and says:

That on March 14, 1980, she served a copy of the PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT by placing a true copy of same by depositing same in an envelope, postage pre-paid, first class, in a mailbox regularly maintained by the United States Post Office and address as follows:

Solictor General of the
United States
Department of Justice
Washington, D. C. 20530

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 13, 1980, at San Diego, California.

OFFICIAL SEAL
ARLENE F. GREENBERG
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires October 16, 1981

GRACE M. FOLKS

Sworn and subscribed before me this 13th day of March, 1980.

Arlene F. Greenberg
Notary Public in and for said State and County

Supreme Court, U. S.
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ALEXANDER KULIK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

PATTY MERKAMP STEMLER
Attorney
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

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No. 79-1455

ALEXANDER KULIK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The judgment order of the court of appeals (Pet. App. B) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on May 24, 1979. A petition for rehearing was denied on February 14, 1980. The petition for a writ of certiorari was filed on March 17, 1980, and is therefore out of time under Rule 22(2) of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the affidavit underlying a warrant to search petitioner's pickup truck was sufficient to support a finding of probable cause.

2. Whether police officers could lawfully enter petitioner's home under the authority of a warrant to arrest his fugitive wife.

STATEMENT

Following a jury-waived trial on stipulated facts in the United States District Court for the Southern District of California, petitioner was convicted of possession of heroin with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). He was sentenced to four years' imprisonment to be followed by ten years' special parole. The court of appeals affirmed (Pet. App. B).

Prior to trial, the district court denied petitioner's motion to suppress evidence, including 13 ounces of heroin seized from petitioner's pickup truck by police officers executing a warrant to search petitioner's apartment and truck for narcotics and for evidence of a murder-for-hire plot. The warrant was issued on the basis of facts alleged in a nine-page affidavit of police officer Lee Roberts.

The affidavit disclosed that Steven Bovan was found dead of gunshot wounds in October 1977, and petitioner and his wife, Elsie Kulik, were indicted in Orange County, California, for conspiracy to commit the murder. Petitioner and his wife were alleged to have hired four men to murder Bovan for a fee of $25,000. The murder was to avenge petitioner's kidnapping by Bovan and others in August 1977. Petitioner and his wife had met with the four gunmen at the offices of Prasadam Distributing, Inc. to discuss the plans for Bovan's murder. The conversations regarding the murder scheme were

believed to have been recorded, but the police could not find the tapes during a search of the offices and believed that the tapes had been removed by petitioner (Affidavit 6-8).

The affidavit also stated that, following the indictment of petitioner and his wife for the murder conspiracy, warrants were issued for their arrests. Petitioner was arrested and released on bond, but his wife remained at large as a fugitive. On December 14, 1977, after observing Mrs. Kulik inside an apartment in Carlsbad, California, local police officers knocked on the door of the apartment to execute the outstanding arrest warrant. Petitioner answered the door and stated that his wife was not there. The police commenced a search of the three story apartment for Mrs. Kulik (Affidavit 2-3).

On the first floor of the apartment Officer Roberts observed two boxes labeled with the initials "PDI," which he recognized as those of Prasadam Distributing, Inc., the company at which the conversations about Bovan's murder had taken place. On the second floor, the officers found in plain view a small quantity of marijuana on a coffee table. While searching for Mrs. Kulik on the third floor, the officers found a semi-automatic rifle and the cylinder portion of a hypodermic syringe. They also discovered petitioner's wife hiding in an underground maintenance crawl hole and arrested her (Affidavit 3, 5-6).

Petitioner was arrested for harboring a fugitive. A search of petitioner incident to his arrest disclosed fictitious identification documents in the name of Albert Helms. Petitioner had recently been seen driving his pickup truck, which, according to state motor vehicle records, was registered to "Albert Helms" (Affidavit 2, 8). The affidavit also revealed that petitioner had been

arrested, in October 1977, for possession with intent to sell more than one pound of high quality heroin (Affidavit 4-5).

On the basis of the information in the affidavit, a state judge issued a warrant to search petitioner's apartment and pickup truck for evidence of the murder conspiracy and for controlled substances.

ARGUMENT

1. Petitioner apparently concedes that there was probable cause to believe that he was involved in several crimes, including conspiracy to commit murder and possession of controlled substances. His contention (Pet. 12-18) is that there was no reason to believe that his pickup truck contained evidence of those crimes. It is true that the affidavit did not contain any eyewitness accounts of individuals who had observed the evidence inside petitioner's truck. Under the Fourth Amendment, however, the nexus between the items to be seized and the place to be searched need not rest on direct observation, but may be based on such factors as the type of crime under investigation, the nature of the items to be seized, and normal inferences as to where such items would be kept. See, *e.g.*, *United States* v. *Burgard*, 551 F. 2d 190, 192-193 (8th Cir. 1977); *United States* v. *Rahn*, 511 F. 2d 290, 293-294 (10th Cir.), cert. denied, 423 U.S. 825 (1975); *United States* v. *Lucarz*, 430 F. 2d 1051, 1055 (9th Cir. 1970).

Moreover, the affidavit need not contain information providing certainty that the items sought will be found as a result of the search. It is only necessary that the facts and circumstances in the affidavit suffice to warrant a person of reasonable caution to believe that an offense

has been or is being committed and that evidence related to the crime will be found at the place to be searched. See *Brinegar* v. *United States*, 338 U.S. 160, 175-176 (1949).

Viewed in a common sense manner (*United States* v. *Ventresca*, 380 U.S. 102, 108 (1965)), the affidavit provided probable cause to believe that narcotics and evidence of the murder for hire scheme were concealed in petitioner's truck. Petitioner argues (Pet. 17) that it is unreasonable to conclude that one who possesses a small quantity of marijuana in his house will also keep marijuana and related paraphernalia in his automobile. But petitioner had recently been arrested for possession of a large quantity of heroin, and the police, while searching for Mrs. Kulik, had found a syringe, a false identification, and a semi-automatic rifle in petitioner's apartment. These facts indicated that petitioner was more than a casual user of marijuana, and provided reason to believe that he possessed additional quantities of illicit drugs. Moreover, the police were also searching for evidence relating to Bovan's murder. While evidence of these crimes might have been located elsewhere, petitioner's truck was a logical place to search for such evidence, especially since the truck was registered to him under an assumed name.

2. Petitioner contends (Pet. 19-20) that the heroin should have been suppressed as the fruit of an unlawful entry into his apartment to arrest his wife. This claim is disposed of by this Court's recent decision in *Payton* v. *New York*, No. 78-5420 (Apr. 15, 1980). In *Payton* the Court held that absent either consent or exigent circumstances, police must possess an arrest warrant before they may enter a suspect's home to effect an arrest. Here, the police officers acted under the authority of a warrant issued for the arrest of Elsie Kulik following her

indictment for conspiracy to commit murder. Petitioner does not deny that the arrest warrant was issued upon probable cause or that the police had reason to believe that Mrs. Kulik was within the apartment. See *Payton* v. *New York*, *supra*, slip op. 29. Accordingly, the entry into petitioner's residence was lawful under the Fourth Amendment and provides no basis for suppression of the heroin that was subsequently seized pursuant to the search warrant.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

PATTY MERKAMP STEMLER
Attorney

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